

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SIERRA M. SWEETING,
Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.,
Defendants.

No. 2:23-cv-2807-DJC-SCR

FINDINGS AND RECOMMENDATION

Plaintiff Sierra M. Sweeting is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On December 4, 2023, plaintiff filed a complaint and a motion to proceed in forma pauperis (“IFP”). ECF Nos. 1 and 2. On April 23, 2024, this court screened the complaint per the screening process required by the IFP statute and dismissed the complaint for failure to comply with Federal Rule of Civil Procedure 8 and failure to state a claim¹. ECF No. 5. The order provided in relevant part that within 28 days “an amended complaint shall be filed that cures the defects noted in this order and complies with the Federal Rules of Civil Procedure.” ECF No. 5 at 5-6. The order cautioned that failure to timely comply with the order may result in dismissal of the action. ECF No. 5 at 6.

¹ The Court did not rule on Plaintiff’s motion to proceed IFP at that time, and does not do so now in light of the recommendation to dismiss. Dismissal would render the IFP issue moot.

1 Plaintiff did not file an amended complaint.

2 On August 28, 2024, this Court issued an Order to Show Cause directing Plaintiff to show
3 cause, in writing, within 14 days why the failure to file an amended complaint should not result in
4 a recommendation that this case be dismissed for failure to prosecute. The Order to Show Cause
5 further provided that if Plaintiff failed to respond, this Court “will recommend dismissal.” ECF
6 No. 7 at 2. More than 14 days have passed, and Plaintiff has not filed a response.

7 In recommending this action be dismissed for failure to prosecute, the Court has
8 considered “(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *Ferdik v.*
11 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (citation omitted). Because this case cannot
12 move forward without Plaintiff’s participation, the Court finds the factors weigh in favor of
13 dismissal. Therefore, **IT IS HEREBY RECOMMENDED** that this action be dismissed, without
14 prejudice, for lack of prosecution and for failure to comply with the court’s order. *See* Fed. R.
15 Civ. P. 41(b); Local Rule 110.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
18 days after being served with these findings and recommendations, Plaintiff may file written
19 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s
20 Findings and Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file
21 objections within the specified time may waive the right to appeal the District Court’s order.
22 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

23 SO ORDERED.

24 DATED: September 23, 2024

25
26 
27 SEAN C. RIORDAN
28 UNITED STATES MAGISTRATE JUDGE